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STATE REPRESENTATIVE
5th DISTRICT
JAY RODNE
ASSISTANT FLOOR LEADER

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ATTORNEY GENERAL
OF WASHINGTON

February 14, 2006

The Hon. Rob McKenna
Attorney General
State of Washington
P.O. Box 40100
Olympia, WA 98504-0100

Re: Request for Attorney General Opinion

Dear Attorney General McKenna:

I respectfully request an Attorney General Opinion on issues that relate to the special assessments that are authorized to be imposed for conservation districts pursuant to RCW 89.08.400. I am making this request due to concerns I have about events that occurred during King County's recent adoption of a special assessment for the King Conservation District.

I believe it is important that counties and conservation districts be provided with consistent statewide advice regarding the assessment authorization process, including advice relating the limitations, if any, placed on a county's ability to alter a conservation district's program of work or the intended allocation of assessment funds deemed necessary to support the program of work. As such, I desire an opinion from the Attorney General in order to answer the question of whether RCW 89.08.400(2) gives a county the right to make changes to a conservation district's program of work and the proposed budget and allocation of the assessment funds necessary to accomplish the program of work. This is an important question that applies to all conservation districts that may seek special assessments under the procedures set forth in RCW 89.08.400. I am also seeking answers to several related questions with the intent to provide additional guidance to counties and conservation districts about the assessment authorization process.

I. Background Information.

On May 13, 2005, Engrossed Senate Bill 5094 relating to conservation districts and special assessments was enacted by the legislature and signed into law by the Governor. This new legislation went into effect on July 24, 2005. See Chapter 466, Laws of 2005. This bill modified RCW 89.08.400 by: (1) increasing the maximum annual per

parcel rate up to \$10.00 for counties with a population over one million five hundred thousand persons, and (2) specifically providing that except for the assessment funds retained by the county assessor and county treasurer to cover costs incurred in spreading and collecting the special assessment, "[a]ll remaining funds collected under this section shall be transferred to the conservation district and used by the conservation district in accordance with this section."

On May 18, 2005, the King Conservation District ("District") submitted its 2006 program of work to King County which identified the conservation programs and services to be undertaken by the District in 2006. On July 25, 2005, King County adopted Motion No. 12165 which recommended that the District modify its program of work by deleting certain financial information contained in the budget section of the District's program of work. King County's motion indicates that this recommendation was made to due to the fact that the special assessment distribution was undetermined at that point and was the subject of ongoing discussions among various agencies.

On July 27, 2005, the District approved Resolution No. 2005-01 which adopted a proposed system of assessments based on its 2006 program of work. In addition to proposing a new system of assessments, Resolution No. 2005-01 set forth a specific budget and allocation of how the District intended to distribute the funds it received from the special assessments it was seeking. A copy of the District Resolution No. 2005-01 is attached hereto as **Exhibit A**. In accordance with RCW 89.08.400, the District filed its proposed system of assessments with King County, the county legislative body authorized by RCW 89.08.400 to impose the special assessments.

On November 21, 2005, King County enacted Ordinance No. 15332 (2005-0463) which adopted a system of assessments, including a \$10.00 per parcel assessment on certain lands described therein. Although the District had sought an assessment period of 4 years, the duration of the assessment adopted by King County was only for one year (2006). In addition, Ordinance No. 15332 included specific provisions which changed the budget and allocation of funds deemed necessary by the District to accomplish its 2006 program of work and re-allocated the assessment funds to other conservation programs and services that King County believed were more appropriate from King County's perspective, even though the District did not share this view. Further, Ordinance No. 15332 included a directive that unless the District submitted a revised 2006 program of work to King County before December 31, 2005 that implemented the assessment allocation established by King County, the special assessment adopted by the Ordinance would automatically expire and the special assessment would not be imposed in 2006.

Facing the loss of a significant portion of funding for its conservation programs and services, the District reluctantly re-submitted its 2006 program of work to King County before the end of the year. The revised 2006 program of work included the allocation of the assessment funds in the manner required by King County.

II. Request for Opinion on the Following Questions.

The facts and circumstances relating to the events described above raise significant questions about the respective rights and authorities of counties and conservation districts in the special assessment authorization process. It appears that the process utilized by King County may infringe upon the rights of conservation districts which are independent municipal entities to (1) establish their own conservation programs and services and (2) to determine how the assessment funds will be used to accomplish their conservation goals. For this reason, I am seeking answers to the following questions:

A. Does a county legislative body have the authority under RCW 89.08.400(2) to require a conservation district to modify its program of work and the related budget and intended allocation of the special assessment funds, or is a county's authority to "accept, or modify and accept" a proposed system of assessments limited to changes to: (1) the methodology used to classify lands that will receive a special benefit from activities of the conservation district, (2) the amount of the assessment to be levied against the parcels of real property, and (3) the duration of the assessment?

This question is important in that it seeks to define the limit of a county's authority to "accept, or modify and accept" a proposed system of assessments.

B. Is a county legislative body required to perform a special benefit analysis under RCW 89.08.400(2) on the program of work submitted by a conservation district in support of a proposed system of assessments or may a county disregard the conservation district's program of work in favor of a program of work deemed more appropriate by a county?

This question is important in that it seeks guidance as to which entity has the ultimate authority to determine the conservation programs and services to be provided.

C. Does a county legislative body have the implied authority under RCW 89.08.400(2) to reject a proposed system of assessments in its entirety or to refuse to process a conservation district's proposed system of assessments?

This question is important because RCW 89.08.400(2) speaks only to a county's authority to "accept, or modify and accept" a proposed system of assessments. If a county has the power to control or circumvent the assessment process, it could lead to unwarranted pressures being applied to conservation districts to undertake conservation programs deemed important by counties or face the risk of losing the assessment entirely.

D. What options and obligations does a conservation district have if it does not agree with the final system of assessments imposed by a county legislative authority?

For example, does a conservation district have the authority to elect not to implement the final system of assessment adopted by a county?

E. May a conservation district elect to withdraw its proposed system of assessments at any time before a county legislative authority takes final action on the proposed system of assessments?

I appreciate your time to review this request. If you need additional information in order to respond to this request, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Rodne". The signature is fluid and cursive, with the first name "Jay" and last name "Rodne" clearly distinguishable.

Jay Rodne
State Representative
5th District